

DISTRICT COURT, ARAPAHOE COUNTY, STATE OF COLORADO 7325 S. Potomac St. Centennial, Colorado 80112	▲ COURT USE ONLY ▲
<b>PEOPLE OF THE STATE OF COLORADO</b>  v.  <b>JAMES EAGAN HOLMES,</b> <b>Defendant</b>	Case No. <b>12CR1522</b>  Division: <b>26</b>
<b>ORDER REGARDING DEFENDANT'S OBJECTION TO PEOPLE'S          REQUEST TO ADDRESS ISSUES SURROUNDING WAIVER OF          PRIVILEGE WITH RESPECT TO PACKAGE SENT TO DR. FENTON          AT JUNE 4, 2013 ADVISEMENT HEARING (D-41)</b>	

This matter is before the Court on the defendant's objection to the People's request to address issues surrounding waiver of any privilege related to the package sent to Dr. Fenton at the June 4, 2013 advisement hearing. For the reasons set forth in this Order, the objection is overruled in part.

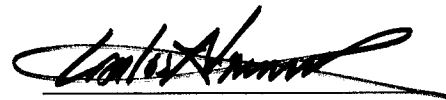
The Court understands that defense counsel are reviewing the May 29 Order and are preparing the motions due on June 3. However, the Court granted defense counsel three additional days to file their motions and four additional days to review the May 29 Order. Moreover, the privilege issue related to the package has been briefed and discussed before. It is true, of course, that the defendant's not

guilty by reason of insanity plea, if accepted, may alter the analysis, but the parties have been aware of that for some time. More than eight months ago, on September 20, the prosecution expressed its position that a not guilty by reason of insanity plea would result in any privilege over the package sent to Dr. Fenton being waived. Indeed, that was the reason that the waiver issue was deferred until now.

The objection is sustained only to the extent that the Court declines to accept the defendant's not guilty by reason of insanity plea, because in that situation the Court will need to schedule a second hearing on the waiver issue. However, the objection is otherwise overruled. If the Court accepts the defendant's plea, the parties should be prepared to discuss the effect of that plea on any privilege related to the package. *See* § 16-8-103.6(2)(a), C.R.S. (2012). If the Court determines at the hearing that briefing is necessary, it will request it. Likewise, if the Court determines at the hearing that a separate hearing is appropriate, it will schedule it.

Dated this 31<sup>st</sup> day of May of 2013.

BY THE COURT:



Carlos A. Samour, Jr.  
District Court Judge

CERTIFICATE OF SERVICE

I hereby certify that on May 31, 2013, a true and correct copy of the Court's **Order Regarding Defendant's Objection to People's Request to Address Issues Surrounding Waiver of Privilege With Respect to Package Sent to Dr. Fenton at June 4, 2013 Advisement Hearing (D-41)** was served upon the following parties of record:

Karen Pearson  
Amy Jorgenson  
Rich Orman  
Dan Zook  
Jacob Edson  
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A handwritten signature in black ink, appearing to read "Amy Jorgenson", is written over a horizontal line.